

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AGCS MARINE INSURANCE COMPANY,
BARNES & MULLINS LTD, THE BINDING
SITE GROUP LTD, BRICHWOOD PRICE
TOOLS, FOSSIL GROUP EUROPE GMBH,
HITACHI KOKI EUROPE LTD,
POWERHOUSE FITNESS, TRAVIS
PERKINS PLC, and WALTONS MUSIC
LTD,

Plaintiffs,

vs.

EXPEDITORS INTERNATIONAL OCEAN,
INC. D/B/A EXPEDITORS
INTERNATIONAL and EXPEDITORS
INTERNATIONAL OF WASHINGTON,
INC.,

Defendants.

IN ADMIRALTY

No.:

COMPLAINT

The plaintiffs herein, by their undersigned attorney, James F. Whitehead, complaining of the above named defendants, allege upon information and belief:

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1333(1) in that this is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

1 2. At and during all times hereinafter mentioned, plaintiffs had and now have the legal
2 status and principal offices and places of business stated in **SCHEDULE A** hereto annexed and
3 by this reference made a part hereof.

4 3. At and during all the times hereinafter mentioned, defendant EXPEDITORS
5 INTERNATIONAL OCEAN, INC., which does business as EXPEDITORS INTERNATIONAL
6 OCEAN (hereinafter "EXPEDITORS" and/or "Defendant"), was and is a corporation or other
7 business entity organized under the laws of the state of Delaware with an office and place of
8 business at 1015 Third Avenue, 12th Floor, Seattle, Washington 98104, and was and now is
9 engaged in business as a non-vessel owning common carrier of merchandise by water for hire.
10 Upon information and belief, CT Corporation System, 505 Union Ave SE Suite 120, Olympia,
11 Washington 98501 is the designated agent for service of process.
12

13 4. At and during all the times hereinafter mentioned, defendant EXPEDITORS
14 INTERNATIONAL OF WASHINGTON, INC. (hereinafter, "EXPEDITORS WASHINGTON"
15 and/or "Defendant"), was and is a corporation or other business entity organized under the laws
16 of the state of Washington, with an office and place of business at 1015 Third Ave 12th Floor,
17 Seattle, Washington 98104, and was and now is engaged in business as a non-vessel owning
18 common carrier of merchandise by water for hire. Upon information and belief, Betsy Smith is
19 the registered agent for receipt of service of process and is located at the address set forth above.
20

21 5. At and during all the times hereinafter mentioned, EXPEDITORS and EXPEDITORS
22 WASHINGTON transact and have transacted business in the state of Washington, where they
23 regularly solicit business for the transport and ultimate delivery of shipments to worldwide
24 destinations.
25

1 6. To effect transport of certain shipments of cargo, EXPEDITORS and EXPEDITORS
2 WASHINGTON issued certain bills of lading to the shippers of merchandise or otherwise
3 arranged for carriage of shipments, wherein the subject contracts of carriage detailed the scope of
4 transport, the name of the vessel, the description of the merchandise being accepted for transport,
5 and the port or place of destination. In addition, the identity of the shipper, consignee or receiver
6 was similarly noted on the bills of lading. The specific bills of lading that were issued to
7 plaintiffs or their designated agents are set forth in **SCHEDULE B**, which is annexed hereto.

8
9 7. Upon information and belief, the forum selection clause in the bills of lading requested
10 suit to be filed in the United States District Court for the Western District of Washington or the
11 Superior Court for the State of Washington in King County, in that clause 27 of the bill of lading
12 provides, in pertinent part, as follows:

13 (a) This Bill of Lading shall be governed by and construed in accordance with the
14 internal Laws of the State of Washington (excluding its Laws relating to conflicts
15 of law), except as the same may be governed by the federal Law of the United
16 States. MERCHANT IRREVOCABLY CONSENTS TO NON-EXCLUSIVE
17 JURISDICTION AND VENUE FOR LEGAL PROCEEDINGS RELATED TO
18 ALL CLAIMS AND DISPUTES ARISING FROM OR IN CONNECTION
19 WITH THIS BILL OF LADING OR THE GOODS, WHETHER UNDER
20 FEDERAL, STATE, LOCAL, OR FOREIGN STATUTES, REGULATIONS,
21 OR COMMON LAW, IN THE UNITED STATES DISTRICT COURT FOR
22 THE WESTERN DISTRICT OF WASHINGTON OR THE SUPERIOR COURT
23 OF THE STATE OF WASHINGTON SITTING IN KING COUNTY.
24
25

1 MERCHANT AND CARRIER HEREBY CONSENT TO THE
2 COMMENCEMENT AND TRANSFER OF ALL SUCH LEGAL
3 PROCEEDINGS TO SUCH COURTS. Merchant irrevocably consents to the
4 commencement and to the transfer of venue in any or all such actions to any other
5 venue in which Carrier is party to a legal action brought by itself or a third party
6 that arises from or is connected with the Goods, their carriage, loading, unloading,
7 handling, or storage, or loss, damage, or delay related to any of the Goods. The
8 Merchant waives all defenses based on inconvenience of forum in all actions
9 commenced in the venues agreed to under this Bill of Lading. Merchant shall pay
10 all costs incurred by Carrier (including attorneys' fees and expenses) in
11 connection with any dispute between Carrier and Merchant (including for
12 transfers of venue, for appeals, and in bankruptcy and receivership proceedings).

14 8. This Court has jurisdiction over the maritime claims set forth by Plaintiffs and all such
15 claims are properly before this Honorable Court. All conditions precedent to maintaining the
16 subject action were complied with.

18 9. Plaintiffs were the shippers, consignees, owners and/or subrogated insurers or otherwise
19 had a proprietary interest in the shipments described in Schedule B, and bring this action on their
20 own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be
21 or become interested in said shipments, as their respective interests may ultimately appear, and
22 plaintiffs are entitled to maintain this action.

24 **UNDERLYING FACTS RELATING TO THE LOSS**

25 10. At and during all the time hereinafter mentioned, the M/V MOL COMFORT ("Vessel")
was a Bahamian flagged container vessel of 8,110 TEU's that was operated by Mitsui OSK

1 Lines, Ltd., managed by MOL Ship Management (Singapore) PTE Ltd., and which regularly
2 traded between ports in the Far East and Europe.

3 11. The shipments were tendered to Defendants at the port or ports and were to be delivered
4 by Plaintiffs and/or the shippers or designated agents in Schedule A, and there were delivered to
5 EXPEDITORS and EXPEDITORS WASHINGTON (collectively "Defendants") in good order
6 and condition the shipments described in Schedule B (hereinafter "Shipments"), which
7 EXPEDITORS and EXPEDITORS WASHINGTON received, accepted and agreed to transport
8 for certain consideration to the various ports of destination set forth on the bills of lading issued
9 by Defendants that are identified by number in the attached Schedule B.
10

11 12. Defendants booked the Shipments for transport on the M/V MOL COMFORT, with
12 companies and/or other carriers that are not disclosed on the bills of lading, upon terms and
13 conditions unknown to Plaintiffs, and had agreed to transport or otherwise ensure transport of the
14 subject shipments to the port or place of destination in the same good order and condition as
15 received, on terms and conditions that were not disclosed to Plaintiffs.
16

17 13. Upon information and belief, the Vessel suffered a catastrophic failure of its hull when
18 cracks in the hull eventually progressed to a stage where the fore and aft part of the Vessel
19 completely separated, while it was underway in the Indian Ocean. Salvage efforts were
20 unsuccessful and the aft part of the vessel sank on or about June 27, 2013. The fore part of the
21 Vessel was towed in to a position off the Mumbai Coast, and the bow section caught fire and
22 eventually sank on or about July 11, 2013. The Vessel was therefore lost with all cargo aboard.
23

24 14. As a result, Plaintiffs' shipments were not delivered to destination in that they were a
25 total loss.

1 15. At all times relevant to the allegations set forth herein, Defendants acted as carriers and
2 were and are engaged in the common carriage of merchandise for hire, and issued or caused to be
3 issued certain bills of lading whereby they agreed to deliver the Shipments to destination.

4 **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

5 16. Plaintiffs repeat and reallege and incorporate by reference herein each and every
6 allegation set forth in paragraphs 1 through 15 as though fully set forth herein.

7 17. The goods identified in Schedule B were never delivered to the port of destination in that
8 they were lost at sea when the MOL COMFORT's hull suffered a catastrophic failure in sea and
9 weather conditions that should have been expected, and which were in no way extraordinary.

10 18. Upon information and belief, the MOL COMFORT was unseaworthy in that it
11 experienced cracks and the failure of its hull due to construction and/or operational defects that
12 affected those vessels in its class.

13 19. Upon information and belief, the terms and conditions of the subject bills of lading
14 sought to incorporate the Carriage of Goods by Sea Act, Harter Act, the Hague Rules and/or the
15 Hague Visby Rules, and/or such tariffs, bills of lading and/or other contracts of which other
16 "Persons" engaged in the transport of the goods could claim the benefit. However, the carrier of
17 the shipment was designated as EXPEDITORS on the bills of lading, which were issued for
18 carriage of the shipment, and pursuant to the obligations under the general maritime law and the
19 various acts or regimes which are referenced by the bills of lading, the carrier(s) were obligated
20 to provide a seaworthy vessel or were otherwise obligated to exercise due diligence to supply a
21 seaworthy vessel for the contemplated voyage.

22 20. Upon information and belief, the terms and conditions of the subject bills of lading
23 incorporated certain provisions seeking protection(s) of certain tariffs, bills of lading, and/or
24
25

1 contracts by which such other "Persons" or Expeditors's liability would be limited to something
2 less than Plaintiffs' actual monetary loss. However, the scope and extent of such terms and
3 conditions have not been disclosed by EXPEDITORS or EXPEDITORS WASHINGTON.

4 21. As a carrier and/or non-vessel owning common carrier, EXPEDITORS AND
5 EXPEDITORS WASHINGTON are strictly liable for the shipments they failed to deliver, and
6 otherwise breached the contract(s) of carriage.

7 22. By reason of the premises, EXPEDITORS failed to deliver the shipments at the port or
8 places of destination due to the unseaworthiness of the Vessel, breached their duty to the
9 plaintiffs as common carriers by water for hire, and as non-vessel owning common carrier, and
10 were otherwise at fault.

11 23. Plaintiffs have duly performed all duties and obligations on their part to be performed.

12 24. By reason of the premises, plaintiffs have sustained damages in the monetary amount of
13 \$2,322,645.94, as nearly as same can now be estimated, plus interest, costs, and attorneys fees.
14

15
16 **WHEREFORE**, plaintiffs pray:

17 1. That process in due form of law according to the practice of this Court may issue
18 against defendants.


19 2. That if defendants cannot be found within this District, that all of their property
20 within this District, as shall be described in the affidavit, be attached in the sum set forth in this
21 complaint, with interest and costs.

22 3. That a decree may be entered in favor of plaintiffs against defendants for the
23 amount of plaintiffs' damages, together with interest and costs.

24 4. Plaintiffs further pray for such other, further and different relief as to this Court
25 may seem just and proper in the premises.

1 Dated at Seattle, Washington, this 25th day of June, 2014

2 LAW OFFICE OF JAMES F. WHITEHEAD

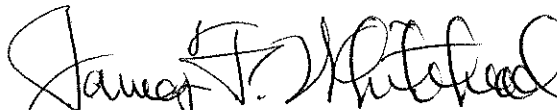
3 
4 James F. Whitehead, WSBA#6319
5 Attorney for Plaintiffs

6
7
8 **VERIFICATION**

9 I, James F. Whitehead, am local counsel for plaintiffs with respect to the above-described
10 claims. The facts alleged in the foregoing complaint are true and correct to the best of my
11 knowledge, information, and belief based upon my own knowledge of the casualty described
12 above and the records made available to me by plaintiffs' New York counsel, who are expected
13 to seek admission *pro hac vice* for this action in due course. Authorized officers of plaintiffs are
14 not available in this district to make verifications on their behalf, but I am so authorized.
15

16 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
17 and correct.
18

19 Executed on June 25, 2014.

20 
21 James F. Whitehead
22

ATTACHMENT A

AGCS MARINE INSURANCE COMPANY, was and is an entity organized under law with an office and place of business at 225 West Washington Street, Suite 1800, Chicago, Illinois, and at all times relevant to the allegations set forth in the Complaint was and is the subrogated insurer for SENSITECH EMEA B.V., an entity organized and existing under the laws of the Netherlands with an office and place of business at Lireweg 50-52, Nieuw Vennep 2153 PH, Netherlands.

BARNES & MULLINS LTD is an entity organized and existing under the laws of the United Kingdom with an office and place of business at Unit 14, Mile Oak Ind Estate, Oswestry, Shropshire SY10 8GA, United Kingdom.

THE BINDING SITE GROUP LTD is an entity organized and existing under the laws of the United Kingdom with an office and place of business at 8 Calthrope Road Edgbaston, Birmingham B15 1QT, United Kingdom.

BRICHWOOD PRICE TOOLS is an entity organized and existing under the laws of the United Kingdom with an office and place of business at Brich Park, Lodge Park Road, Gilbrook Nottingham, NG16 2AR, United Kingdom.

FOSSIL GROUP EUROPE GMBH is an entity organized and existing under the laws of Switzerland with an office and place of business at Horburgstrasse 105, CH 4057, Basel, Switzerland.

HITACHI KOKI EUROPE LTD is an entity organized and existing under the laws of the Republic of Ireland with an office and place of business at Clonshaugh Ind Estate, Clonshaugh, Dublin 17, Ireland.

POWERHOUSE FITNESS is an entity organized and existing under the laws of the United Kingdom with an office and place of business at Cloberfield House 57, Beardmore Way, Clydebank, Glasgow G81 4HT, United Kingdom.

1 WALTONS MUSIC LTD is an entity organized and existing under the laws of the Republic of
2 Ireland with an office and place of business at Unit 6 Rosemount Park Drive, Rosemount
3 Business Park, Ballycoolin, Co., Dublin, Ireland.

4 TRAVIS PERKINS PLC is an entity organized and existing under the laws of the United
5 Kingdom with an office and place of business at Lodge Way House, Lodge Way, Harlestone
6 Road, Northampton, NN5 7UG, United Kingdom.

Claim No.	Interest	Carrier	Bill of Lading No.	Container No.	Shipper	Consignee	Cargo	Ports	Value (Yen)	Value (USD)	Freight (EUR)	Freight (GBP)	Freight (USD)	Total Claim (USD)
1	AGCS Marine Insurance Company	Expeditors International Ocean	6911063759	HDMU6858869	Carrier Transcold Hong Kong Ltd	Sensitech EMEA B.V.	Plastic temperature monitors	Hong Kong to Rotterdam, Netherlands		\$680,000.00				\$680,000.00
2	Barnes & Mullins LTD	Expeditors International Ocean	6930122314	TOMU8649202	Tonbo Musical Inst. Co., Ltd.	Barnes & Mullins LTD	Musical Instruments	Tokyo, Japan to Southampton, U.K.	\$1,426,950.00	\$14,198.15		£99.27	\$147.95	\$14,346.01
3	The Binding Site Group Ltd	Expeditors International Ocean	6930122440	APZU3089156	Tokyo Book Machinery Ltd	The Binding Site Group	Automatic Clinical Chemistry Analyzer	Tokyo, Japan to Southampton, U.K.	\$20,800,000.00	\$306,460.00		£795.87	\$1,185.42	\$307,645.42
4	Brichwood Price	Expeditors International Ocean	622707496	SEGU1042674	Li Yuen (China) Investment Ltd	Brichwood Price Tools	Leather Safety Shoes	Xiaolan Port, China to Southampton, U.K.		\$34,850.00				\$34,850.00
	Tools		622707505	MOAU6501029	Petchek International Ltd	Brichwood Price Tools	Safety Footwear	Xiaolan, China to Southampton, U.K.		\$41,000.00				\$41,000.00
			622707493	MOFU0411681	Li Yuen (China) Investment Ltd	Brichwood Price Tools	Leather Safety Shoes	Xiaolan Port, China to Southampton, U.K.		\$73,150.00				\$73,150.00
5	Fossil Group Europe GmbH	Expeditors International Ocean	6911064667	HDMU6577898	Universal Leatherware (Asia) LTD	Fesco GmbH	WM's Handbags Cowhide Leather	Hong Kong to Hamburg, Germany		\$146,640.54	€ 1,027.00		\$1,316.21	\$147,956.75
6	Fossil Group Europe GmbH	Expeditors International Ocean	6911064668	HDMU6577898	Luen Seng Industrial Co., Ltd.	Fesco GmbH	100% Cotton Canvas Handbags	Hong Kong to Hamburg, Germany		\$4,180.00	€ 99.55		\$127.53	\$4,307.58
7	Fossil Group Europe GmbH	Expeditors International Ocean	6911064669	HDMU6577898	Reemount Limited	Fossil European Services Company	Cowhide Leather Belts and Keyfobs	Hong Kong to Hamburg, Germany		\$294.75	€ 580.44		\$743.90	\$1,038.65
										\$8,864.35	incl. above		\$8,864.35	
										\$4,915.80	incl. above		\$4,915.80	
										\$50,738.05	incl. above		\$50,738.05	
										\$23,863.60	incl. above		\$23,863.60	
8	Fossil Group Europe GmbH	Expeditors International Ocean	6911064670	HDMU6577898	Delicate Enterprise Corp	Fossil European Services Company	100% Cowhide Leather Belt	Hong Kong to Hamburg, Germany		\$14,588.06	€ 109.59		\$140.45	\$14,728.51
9	Fossil Group Europe GmbH	Expeditors International Ocean	6911064671	HDMU6577898	Fossil (East) LTD	Fesco GmbH	Tin Boxes	Hong Kong to Hamburg, Germany		\$2,788.48	€ 260.00		\$333.22	\$3,121.70
							Plastic Displays			\$482.15	incl. above		\$482.15	
							Plastic Displays			\$556.99	incl. above		\$556.99	
10	Fossil Group Europe GmbH	Expeditors International Ocean	6911064673	HDMU6577898	Reemount Limited	Fossil European Services Company	Cowhide Leather Belts	Hong Kong to Hamburg, Germany		\$888.00	€ 30.80		\$39.47	\$927.47
							Plastic Cores, Paper Boxes, Plastic Boxes, Plastic Displays, Wooden Displays and Plastic Cluff			\$47,426.57	€ 10,483.54		\$13,435.81	\$60,862.38
11	Fossil Group Europe GmbH	Expeditors International Ocean	6911064674	HDMU6321458	Fossil (East) LTD	Fesco GmbH				\$7,989.25	incl. above		\$7,989.25	
				HDMU6765703						\$98,333.33	incl. above		\$98,333.33	
				HDMU6793984						\$89,806.45	incl. above		\$89,806.45	
				HDMU6319825						\$121,861.41	incl. above		\$121,861.41	
										\$39,195.05	incl. above		\$39,195.05	
										\$5,919.68	incl. above		\$5,919.68	
										\$50,488.60	incl. above		\$50,488.60	
										\$19,498.49	incl. above		\$19,498.49	
										\$398.39	incl. above		\$398.39	
12	Hitachi Koki Europe Ltd	Expeditors International Ocean	6810489981	XXMU4564232	Porite Taiwan Co Ltd	Hitachi Koki Europe Ltd	Die Casting Parts	Kaohsiung, Taiwan to Dublin, Ireland		\$12,605.16	€ 883.49		\$12,605.16	
										\$3,510.00	€ 120.84		\$154.37	\$3,664.84
											€ 883.49		\$1,132.29	\$1,132.29
13	Powerhouse Fitness	Expeditors International Ocean	6380105055	TGHU4197908	Pivot Fitness Equipment Limited	Power House Fitness Equipment Co.	Fitness equipment	Xingang, China to Grangemouth, U.K.		\$117,499.79		£3,831.41	\$5,706.77	\$123,206.56
				MOAU0717216									\$0.00	\$0.00
				TEMU2501120									\$0.00	\$0.00
				FCU3487377									\$0.00	\$0.00
14	Travis Perkins plc	Expeditors International Ocean	622707645	MOFU0602316	Zhongshan Yue Liang Economy & Trade Imp. & Exp. Co. Ltd.	Travis Perkins Trading Company Ltd	Bath Screen	Zhongshan, China to Southampton, U.K.		\$17,899.70		£1,685.72	\$2,510.83	\$20,410.53
15	Travis Perkins plc	Expeditors International Ocean	617885971	TQU3023707	Sunny Corp	Travis Perkins	Screws	Vung Tau, Vietnam to Southampton, U.K.		\$39,098.50		£3,079.17	\$4,586.33	\$43,684.83
				TGHU1586151						\$64,458.90			\$0.00	\$64,458.90
				APZU3485887									\$0.00	\$0.00
				PQU3817205									\$0.00	\$0.00

Claim No.	Interest	Carrier	Bill of Lading No.	Container No.	Shipper	Consignee	Cargo	Ports	Value (Yen)	Value (USD)	Freight (EUR)	Freight (GBP)	Freight (USD)	Total Claim (USD)
16	Travis Perkins plc	Expeditors International Ocean	622707643	TOLU8469456 CXDU1155899	Zhuohai BOW Kitchen & Bath Products Corporation	Travis Perkins PLC	Shower enclosures	Zhuohai, China to Southampton, U.K.		\$119,551.60		£10,420.23	\$15,520.62	\$135,072.22
				TQNU5262020										\$0.00
				TQNU8854869										\$0.00
				TQNU8532306										\$0.00
				MOTU5306919										\$0.00
17	Waltons Music Ltd	Expeditors International Ocean	6380104904	UETU2248024	Sunrise (Taiwan) International Trade Co., Ltd.	Waltons Musical Instruments LTD	Musical instruments	Xinggang, China to Dublin, Ireland		\$11,167.20	€ 270.00		\$346.03	\$11,513.23
											€ 40.00		\$51.26	\$51.26
													Total:	\$2,322,645.94